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**Motion for Admission Pro Hac Vice Pending; Attorney has complied with LR IA 11-2*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

REPUBLICAN NATIONAL COMMITTEE;
NEVADA REPUBLICAN PARTY;
DONALD J. TRUMP FOR PRESIDENT
2024, INC.; and DONALD J. SZYMANSKI.

Plaintiffs.

V

CARI-ANN BURGESS, *in her official capacity as the Washoe County Registrar of Voters*; JAN GALASSINI, *in her official capacity as the Washoe County Clerk*; LORENA PORTILLO, *in her official capacity as the Clark County Registrar of Voters*; LYNN MARIE GOYA, *in her official capacity as the Clark County Clerk*; FRANCISCO AGUILAR, *in his official capacity as Nevada Secretary of State*.

Defendants.

Case No. 3:24-cv-00198

MOTION TO INTERVENE

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MOTION TO INTERVENE AS DEFENDANT

Pursuant to Federal Rule of Civil Procedure 24(a), the Democratic National Committee (“DNC” or “Proposed Intervenor”) respectfully moves to intervene as a defendant in this case as a matter of right. Alternatively, the DNC moves for permissive intervention under Rule 24(b). This Motion is made and based on the papers and pleadings on file in this case and the Points and Authorities set forth below. A proposed Answer is attached as Exhibit A to this Motion and a proposed Motion to Dismiss is attached as Exhibit B consistent with Rule 24(c).¹

INTRODUCTION

Proposed Intervenor has abundant good cause to seek intervention both as a matter of right and permissively. The Republican National Committee (“RNC”), Nevada Republican Party, Donald J. Trump for President, Inc. 2024 (“Trump Campaign”), and Donald J. Szymanski seek to undermine a commonsense and convenient voting option relied on by thousands of

¹ The text of Federal Rule of Civil Procedure 24(c) requires a proposed defendant-intervenor attach a proposed “pleading” to a motion to intervene. *See Fed. R. Civ. P. 24(c)*. Rule 7(a) identifies seven kinds of “pleading,” and does not include Rule 12(b) motions to dismiss. *See Fed. R. Civ. P. 7(a)*. As a result, even though a named defendant may file a motion to dismiss under Rule 12(b) before serving one of the pleadings identified in Rule 7(a), it is not clear whether the same opportunity is available to intervenor-defendants. This matters because under Rule 12(b), motions asserting certain defenses, including failure to state a claim upon which relief can be granted, “*must* be made before pleading if a responsive pleading is allowed.” *Fed. R. Civ. P. 12(b)* (emphasis added). Thus, if “pleading” as used in Rule 24 is limited to the pleadings identified in Rule 7, it is impossible for intervenor-defendants to file a timely 12(b)(6) motion to dismiss. Despite this, courts have held a proposed motion to dismiss satisfies Rule 24(c)’s requirement. *See, e.g., Ctr. for Biological Diversity v. Jewell*, NO. 15-cv-00019, 2015 WL 13037049, at *2 (D. Ariz. May 12, 2015) (“The Court finds that the stricken Motion to Dismiss would have complied with the substantive requirements of Rule 24(c); it puts the existing parties on sufficient notice of the State’s claim or defense, such that the procedural requirements of Rule 24(c) would be met.”). Proposed Intervenor-Defendant respectfully requests the Court accept the attached Proposed Motion to Dismiss or, in the alternative, if the Court determines a proposed answer is required to comply with Rule 24(c), accept the attached Proposed Answer and construe and docket the attached Motion to Dismiss as a Motion for Judgment on the Pleadings under Rule 12(c).

1 Nevada voters in every election *one month* before Nevada voters cast ballots in the Nevada
 2 primary election and *less than six months* before a presidential election.

3 Plaintiffs take issue with Nevada Revised Statute 293.269921, which allows election
 4 officials to accept and count ballots mailed by election day but received up to four days later.

5 The issue, according to Plaintiffs, is that federal law requires there be “only one federal
 6 Election Day” and by accepting ballots cast before election day but not received until after it,
 7 Nevada is impermissibly “holding voting open” beyond that designated federal election day.
 8 ECF No. 1 at 6, ¶ 46. If Plaintiffs were correct in their narrow interpretation of the United States
 9 Constitution and federal law, then the consequences for Nevada elections, and elections across
 10 the country, would be nothing short of profound.

11 The parties will dispute the merits at a later point, but there can be no reasonable dispute
 12 that the DNC satisfies the criteria for intervention as of right or permissively. Given the stakes of
 13 this litigation, the DNC undoubtedly has significant interests in this action which, if successful,
 14 would force the DNC to expend significant resources and would burden its constituents and
 15 members. Further, the existing parties do not adequately represent the DNC’s interests. Proposed
 16 Intervenor also satisfies the criteria for permissive intervention. The DNC—and its counterpart
 17 the RNC—is regularly permitted to intervene in suits challenging state election procedures. DNC
 18 Counsel have conferred with counsel for the existing parties and no defendants object to the
 19 DNC’s intervention in this matter. Plaintiffs indicated they would alert the Court to their position
 20 after reviewing the intervention papers.

21 For these reasons, the DNC respectfully submits that it should be permitted to intervene
 22 as of right, or, in the alternative, should be granted permissive intervention.

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25 MOTION TO INTERVENE—2

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POINTS AND AUTHORITIES

I. Background

A. The Democratic National Committee

The DNC is the oldest continuing party committee in the United States, dedicated to electing Democratic candidates to all levels of public office nationwide. Its organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their ballots for Democratic candidates. To accomplish its mission, the DNC assists state parties and candidates by providing active support through the development of programs benefiting Democratic candidates. The DNC works with individual members and constituents across Nevada, educating Democratic voters in the state, and working to ensure they have access to the franchise.

The DNC is composed of its chair, vice chairs, and more than 200 members elected by Democrats in every U.S. state and territory and the District of Columbia. The DNC also represents millions of voters scattered around the country, including many within Nevada.

B. Nevada's mail ballot statute

Nevada adopted universal mail voting effective January 1, 2022. 2021 N.V. AB 321 (June 14, 2021). State law requires county clerks and registrars to mail every active registered voter a ballot, with some limited exceptions. NRS 293.269911(1), (2). Voters who receive a ballot may return it either by mail or by dropping the ballot in a designated drop box. NRS 293.269921(1). To be counted, mail ballots must be postmarked on or before election day and received no later than 5:00 p.m. on the fourth day after election day. NRS 293.269921(1)(b).

1 When the date of a ballot's postmark cannot be determined, Nevada law presumes the ballot was
 2 timely submitted as long as it is received before 5:00 p.m. on the third day after election day.
 3 NRS 293.269921(2).

4 **C. Plaintiffs' lawsuit**

5 Plaintiffs seek to declare invalid and enjoin the portions of Nevada law that allow
 6 election officials to count ballots received up to four days after election day. *See generally* ECF
 7 No. 1. Plaintiffs specifically allege that Nevada law runs afoul of 3 U.S.C. § 1 and 2 U.S.C.
 8 §§ 1, 7 because it permits state officials to count ballots received after election day. The problem,
 9 Plaintiffs insist, is that “[t]here is only one federal election day,” and Nevada violates federal law
 10 “[b]y holding voting open beyond the federal Election Day.” *Id.* at 6, ¶ 46. Plaintiffs also bring
 11 two claims under 42 U.S.C. § 1983, erroneously contending that Nevada’s statutory scheme
 12 counts illegitimate votes and, thus, dilutes “honest votes.” *Id.* at ¶¶ 79–80.

13 Among other relief, Plaintiffs seek to enjoin the ballot receipt deadline in the “November
 14 2024 general election” that is *less than six months away*. *Id.* at 16, ¶ B.

15 **II. Argument**

16 **A. Legal standard**

17 “Rule 24 traditionally receives liberal construction in favor of applicants for
 18 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), *as amended* (May 13,
 19 2003); *see also W. Expl. LLC v. U.S. Dep’t of the Interior*, No. 3:15-cv-00491-MMD-VPC, 2016
 20 WL 355122, at *2 (D. Nev. Jan. 28, 2016) (noting Rule 24’s liberal construction and “focus[] on
 21 practical considerations rather than technical distinctions”).

22 The Ninth Circuit “require[s] applicants for intervention as of right pursuant to Rule
 23 24(a)(2) to meet a four-part test”:

24
 25 MOTION TO INTERVENE—4

26 167304893.4

1 (1) the motion must be timely; (2) the applicant must claim a
 2 “significantly protectable” interest relating to the property or
 3 transaction which is the subject of the action; (3) the applicant
 4 must be so situated that the disposition of the action may as a
 practical matter impair or impede its ability to protect that interest;
 and (4) the applicant’s interest must be inadequately represented
 by the parties to the action.

5 *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *Cal. ex rel.*
 6 *Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)).

7 “Rule 24(b) permits the Court to allow anyone to intervene who submits a timely motion
 8 and ‘has a claim or defense that shares with the main action a common question of law or fact.’”
 9 *Nevada v. United States*, No. 3:18-cv-569-MMD-CBC, 2019 WL 718825, at *2 (D. Nev. Jan. 14,
 10 2019) (quoting Fed. R. Civ. P. 24(b)(1)(B)). In addition to a common question of law or fact,
 11 permissive intervention under Rule 24(b) also requires (1) a timely motion and (2) an
 12 independent basis for the court’s jurisdiction. See *Donnelly v. Glickman*, 159 F.3d 405, 412
 13 (9th Cir. 1998).

14 Finally, Rule 24(c) requires that a motion to intervene “be accompanied by a pleading
 15 that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c).

16 **B. The DNC is entitled to intervene as a matter of right.**

17 The DNC satisfies all four requirements for intervention as of right. See Fed. R. Civ. P.
 18 24(a). Specifically, (1) this application for intervention is indisputably timely, (2) the DNC has
 19 an interest in the subject of these actions, (3) the disposition of these cases will impair the DNC’s
 20 ability to protect its interests, and (4) there is inadequate representation of the DNC’s interests by
 21 existing parties to this litigation. See *Aerojet Gen. Corp.*, 606 F.3d at 1148 (reciting four-element
 22 test). The DNC (and other party committees) is regularly permitted to intervene as of right in
 23 suits regarding states’ election procedures. See, e.g., *Paher v. Cegavske*, No. 3:20-cv-00243,

1 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020); *Issa v. Newsom*, No. 2:20-cv-01044, 2020
 2 WL 3074351, at *4 (E.D. Cal. June 10, 2020). There is no reason this case should be treated any
 3 differently.

4 **1. This motion is timely.**

5 First, the motion is timely. “In determining whether a motion for intervention is timely,
 6 [courts in this Circuit] consider three factors: (1) the stage of the proceeding at which an
 7 applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length
 8 of the delay.” *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir.
 9 1997) (citation omitted). Each of these considerations supports a finding of timeliness here. The
 10 timeliness of this motion cannot be seriously questioned.

11 First, this case is at its earliest stage. The Complaint was filed on May 3, 2024, just ten
 12 days ago. *See Paher*, 2020 WL 2042365, at *2 (finding “no question” intervention within a week
 13 of filing was timely). And the DNC filed this motion before any defendant appeared in the case
 14 or any substantive activity occurred. This case has neither a trial date nor an entered case
 15 schedule. *See, e.g., Nevada*, 2019 WL 718825, at *2 (granting motion to intervene filed several
 16 weeks after action commenced); *W. Expl.*, 2016 WL 355122, at *2 (granting motion to intervene
 17 filed nearly two months after action commenced).

18 All other factors also support the timeliness of the DNC’s motion. Given the early stage
 19 of proceedings, the existing parties will suffer no prejudice if the DNC intervenes. The DNC is
 20 also prepared to adhere to any case schedule set by the Court without delay. *See, e.g., W. States*
Trucking Ass’n v. Schoorl, No. 2:18-CV-1989-MCE-KJN, 2018 WL 5920148, at *1 (E.D. Cal.
 21 Nov. 13, 2018) (finding “no delay” where party “sought to intervene [at] the very outset of
 22 litigation”).

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 25 MOTION TO INTERVENE—6
 26 167304893.4

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2. The DNC has a significant, protectable interest in the outcome of this litigation.

The Ninth Circuit “follow[s] the guidance … that ‘if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.’” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (citing Fed. R. Civ. P. 24 advisory committee’s notes). “[N]o specific legal or equitable interest need be established” to satisfy the interest requirement in Rule 24(a)(2). *See Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotation marks omitted). Applicants need only establish that their interest is “protectable under some law and that there is a relationship between the legally protected interest and the claims at issue.” *Id.* Courts have held qualifying interests include an organizational interest in needing “to expend additional resources . . . should [a challenged] election law change” and “an associational interest on behalf of its members . . . should the law change” and threaten those members’ votes. *Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023); *see also La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (holding sufficient interests include a political committee’s need to “expend significant resources” based on a new election law that “regulate[d] the conduct of the Committees’ volunteers and poll watchers”). Courts have also found qualifying interests where a lawsuit threatens to interfere with a political party’s electoral prospects. *See Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding “the potential loss of an election” is sufficient interest for intervention).

This standard is easily met here: Plaintiffs outright admit the relief they seek in this litigation will directly affect Democratic voters and, by extension, Democratic candidates and the DNC. *See* ECF No. 1 at ¶¶ 56–59 (explaining “Democrats disproportionately vote[] by mail compared to Republicans” and “Democrats tend to vote later”).

1 Furthermore, the DNC has significant organizational and associational interests in this
 2 case.

3 Organizational interests: The core mission of Proposed Intervenor is maximizing voter
 4 turnout for Democratic candidates in federal, state, and local elections. To do that in Nevada, as
 5 it does in any other state, the DNC hires employees and recruits volunteers to educate voters on
 6 whether, how, when, and where they can vote under the rules prescribed by the state. Given the
 7 close proximity of the primary and general elections, the DNC has already begun preparing for
 8 the upcoming elections under current law. These expenditures “to educate their members on the
 9 election procedures . . . are routinely found to constitute significant protectable interests.” *Issa*,
 10 2020 WL 3074351, at *3; *see Bost*, 75 F.4th at 687 (finding an interest sufficient where a
 11 political party “would have to expend additional resources . . . should the law change”).

12 Courts in the Ninth Circuit, including this one, have found “significant protectable
 13 interests” where, as here, “Plaintiffs’ success on their claims would disrupt the organizational
 14 intervenors’ efforts to promote the franchise and ensure the election of Democratic Party
 15 candidates.” *Paher*, 2020 WL 2042365, at *2; *see also Issa*, 2020 WL 3074351, at *3
 16 (concluding significant protectable interests exist because if “Plaintiffs were to succeed on their
 17 claims, then the Proposed Intervenor would have to devote its limited resources to educating
 18 their members on California’s current voting-by-mail system and assisting those members with
 19 the preparation of applications to vote by mail”). If Plaintiffs succeed in enjoining portions of
 20 Nevada’s mail ballot statute, the DNC will have to divert and expend resources to encourage
 21 Nevada voters to complete and mail their ballots well before election day to avoid
 22 disenfranchisement—a particularly heavy lift given the sheer volume of voters who submit their
 23 ballots by mail in Nevada. *See Presidential Preference Primary*, Silver State Election Results

24
 25 MOTION TO INTERVENE—8

26 167304893.4

1 2024, <https://silverstateelection.nv.gov/vote-turnout/> (last visited May 6, 2024) (reporting
 2 78.26% of ballots cast by mail in most recent Nevada election). Avoiding that expenditure is a
 3 “direct” and “substantial” interest of the DNC itself, separate from the interests of its constituent
 4 members. *See La Union*, 29 F.4th at 306.

5 A recent case from the Fifth Circuit is squarely on point. In *La Union del Pueblo Entero*
 6 *v. Abbott*, the Fifth Circuit affirmed the RNC’s right to intervene in a suit challenging a Texas
 7 law “pertaining to voter registration, voting by mail, poll watchers, and more” because the RNC
 8 “expend[s] significant resources in the recruiting and training of volunteers and poll watchers
 9 who participate in the election process” and the law at issue “unquestionably regulates the
 10 conduct of the Committees’ volunteers and poll watchers.” *Id.* at 304, 306. That reasoning
 11 applies equally here. The challenged statute implicates the right of all Nevadans to have their
 12 ballot counted; the DNC expends significant resources educating voters about voting
 13 requirements in their state and facilitating the timely completion and submission of ballots. The
 14 law at issue “unquestionably” implicates the conduct of the DNC’s volunteers and staff engaged
 15 in voter education initiatives.

16 Plaintiffs frame their interest in this case not just in terms of how they plan to expend
 17 their resources, but also in terms of “competitive electoral harms.” ECF No. 1 at ¶ 6. Any
 18 “competitive electoral harm” will, by the same token, impact the DNC as well. *Cf. Mecinas v.*
 19 *Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (holding election regulations that “make[] the
 20 competitive landscape worse for a candidate or that candidate’s party” confer standing).

21 Associational interests: Political entities like the DNC have an “associational interest on
 22 behalf of [their] members” to challenge or defend a law that might affect those members’ right to
 23 vote. *Bost*, 75 F.4th at 687; *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 &
 24

1 n.7 (2008) (holding, in the more demanding context of standing, that a political party had
 2 “standing to challenge the validity of” a law that imposed voting requirements on the party’s
 3 members). Proposed Intervenor’s members are both voters and candidates for elected office, and
 4 Plaintiffs’ lawsuit threatens the rights of both.

5 This suit implicates the rights of all DNC voters “to cast their ballots and have them
 6 counted”—a right secured by the Constitution. *See United States v. Classic*, 313 U.S. 299, 315
 7 (1941). Indeed, “[t]here is no right more basic in our democracy than the right to participate in
 8 electing our political leaders.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 191 (2014).
 9 If Plaintiffs’ challenge is successful, numerous Democratic Party voters (indeed, numerous
 10 voters period) could lose the ability to have their votes counted. The DNC has an overriding
 11 interest in preventing that outcome.

12 This suit also threatens to prevent the election of Democratic candidates. ECF No. 1 at
 13 ¶¶ 56–59 (explaining “Democrats disproportionately vote[] by mail compared to Republicans”).
 14 Interference with a political party’s electoral prospects constitutes a particularized interest. *E.g.*,
 15 *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding “the potential loss of an
 16 election” is sufficient interest for intervention); *cf. Mecinas*, 30 F.4th at 898 (holding DNC “has
 17 standing to sue based on the ongoing, unfair advantage conferred to their rival candidates by the
 18 Ballot Order Statute”). This Court and others in the Ninth Circuit have permitted political parties
 19 to intervene on these grounds. *See, e.g.*, *Paher*, 2020 WL 2042365, at *2 (granting intervention
 20 to DNC and related groups where they “maintain significant protectable interests” in their
 21 “efforts to promote the franchise and ensure the election of Democratic Party candidates”); *Issa*,
 22 2020 WL 3074351, at *3 (granting intervention of state party where “Plaintiffs’ success on their
 23 claims would disrupt the organizational intervenors’ efforts to promote the franchise and ensure

1 the election of Democratic Party candidates") (citation omitted). No other defendant has an
 2 interest in the election of candidates, let alone Democratic candidates specifically.

3 If Plaintiffs succeed in enjoining NRS 293.269921, then it will undoubtedly (negatively)
 4 affect both the DNC's voter-members' ability to vote and candidate members' ability to win. *See*
 5 *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (per
 6 curiam) ("Appellees have standing to assert, at least, the rights of their members who will vote in
 7 the November 2004 election.").

8 Finally, if Plaintiffs have standing to file this suit, the DNC has the "mirror image"
 9 interest in opposing it. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249, 2020 WL
 10 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (allowing the RNC and Republican Party of
 11 Wisconsin to intervene "as they are uniquely qualified to represent the mirror-image interests of
 12 the plaintiffs, as direct counterparts to the DNC/[Democratic Party of Wisconsin]"') (internal
 13 quotations omitted), *modified on reconsideration*, 451 F. Supp. 3d 952 (W.D. Wis. 2020).
 14 Indeed, courts regularly grant intervention to Democratic Party organizations in suits brought by
 15 their Republican counterparts, and vice versa. *See, e.g., Ariz. Democratic Party v. Hobbs*, No.
 16 CV-20-01143, 2020 WL 6559160, at *2 (D. Ariz. June 26, 2020) (granting intervention to the
 17 RNC and Arizona Republican Party).

18 The DNC is "uniquely qualified" to defend against suits like this one. *E.g., Bostelmann*,
 19 2020 WL 1505640, at *5. Plaintiffs' lawsuit cuts at the very core of the DNC's purpose to
 20 protect the legal rights of voters and encourage the election of Democratic candidates at the
 21 national, state, and local levels. As such, the DNC's interests are particularized and legally
 22 protectable, satisfying Rule 24(a)(2).

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 25 MOTION TO INTERVENE—11
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1 **3. Denial of the Motion will impair the DNC's ability to protect its**
 2 **interests.**

3 A proposed intervenor bears the “minimal” burden of showing the relevant suit “may”
 4 impair or impede their ability to protect their interests. *Brumfield v. Dodd*, 749 F.3d 339, 344 &
 5 n.2 (5th Cir. 2014) (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)). Courts have
 6 “little difficulty” finding that burden satisfied when the proposed intervenor has a “significant
 7 protectable interest.” *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted).

8 There is little question that disposition of these matters will impair the DNC’s ability to
 9 protect its interests. Any decision invalidating NRS 293.269921 will place additional burdens on
 10 Nevada voters—including members of the Democratic Party and voters who would support
 11 Democratic candidates. In the Presidential Preference Primary conducted earlier this year, nearly
 12 seventy-nine percent of votes were cast by mail. *See Presidential Preference Primary*, Silver
 13 State Election Results 2024, <https://silverstateelection.nv.gov/vote-turnout/> (last visited May 6,
 14 2024). Those voters submitted mail ballots with the understanding that, to be counted, their
 15 ballot need only be postmarked—not received—by election day. Plaintiffs’ lawsuit threatens to
 16 upend that established practice, creating confusion that would require significant voter outreach
 17 to correct.

18 Put another way, if Plaintiffs succeed, numerous voters, including many Democratic
 19 voters, risk disenfranchisement—an outcome that directly threatens the DNC’s interests. As
 20 detailed above, an adverse ruling would, among other things, cause significant upheaval in how
 21 Nevada administers its elections. The DNC educates voters about when, where, and how to
 22 return mail ballots, based on Nevada election law. As Plaintiffs themselves acknowledge, “[m]ail
 23 ballots from Democratic voters … tend to arrive late, *in part because ‘Democratic get-out-the-*
 24 *vote drives—which habitually occur shortly before election day—may delay maximum*

1 Democratic voting across-the-board, and produce a ‘blue shift’ in late mail ballots.” ECF No. 1
2 at ¶ 58 (emphasis added). Those “get-out-the-vote drives” are, in significant part, the work of the
3 DNC. If Plaintiffs succeed in obtaining the relief they seek, the DNC will be forced to dedicate
4 and re-allocate resources—including money and staff time—to effectively reach voters. *See La*
5 *Union*, 29 F.4th at 307 (“If the district court either partially or fully grants the relief sought by
6 the plaintiffs here, the Committees will have to expend resources to educate their members on
7 the shifting situation in the lead-up to the 2022 election.”).

8 And a decision invalidating NRS 293.269921 would harm Democratic candidates’
9 election prospects. Plaintiffs implicitly acknowledge this lawsuit is simply a gambit to skew the
10 upcoming election in their favor: “Counting mail ballots received after Election Day ...
11 specifically and disproportionately harms Republican candidates and voters.” ECF No. 1 at ¶ 60.
12 That is why the RNC seeks to void those votes. But any decision of this Court that invalidates
13 ballots cast on or before election day simply because they are received after election day would
14 equally “specifically and disproportionately harm[]” Democratic candidates and voters. A
15 decision in Plaintiffs’ favor will impair the DNC’s interests in protecting the legal rights of
16 voters and encouraging the election of Democratic candidates.

17 Again, this case resembles numerous decisions in which a variety of federal courts,
18 including this one, found a political party committee may intervene to prevent restrictions on
19 voting access. *E.g., Paher*, 2020 WL 2042365, at *4 (granting DNC intervention in election law
20 case brought by conservative interest group); *Issa*, 2020 WL 3074351, at *3 (granting
21 Democratic Congressional Campaign Committee and California Democratic Party intervention
22 in lawsuit by Republican congressional candidate); *Donald J. Trump for President, Inc. v.*
23 *Murphy*, No. 20-cv-10753, 2020 WL 5229209, at *1 (D.N.J. Sept. 1, 2020) (granting Democratic

25 MOTION TO INTERVENE—13

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1 Congressional Campaign Committee intervention in lawsuit by Republican candidate and party
 2 entities).

3 Because the outcome of this litigation may impair the rights of the DNC, as well as those
 4 of its members, the DNC satisfies the third prong of the Rule 24(a) test.

5 **4. The DNC's interests are not adequately represented by the existing
 6 parties.**

7 “The burden of showing inadequacy of representation is minimal and satisfied if the
 8 applicant can demonstrate that representation of its interests may be inadequate.” *Citizens for
 9 Balanced Use*, 647 F.3d at 898 (internal citations omitted); *see also Trbovich v. United Mine
 10 Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *La Union*, 29 F.4th at 307; *W. Expl.*, 2016 WL
 11 355122, at *3 (intervenor conservation groups’ more narrow interests in environmental
 12 protections may not be adequately represented by a federal agency defendant’s “broader land
 13 management interests”). The DNC certainly meets that standard here.

14 Further, “the government’s representation of the public interest may not be ‘identical to
 15 the individual parochial interest’ of a particular group just because ‘both entities occupy the same
 16 posture in the litigation.’” *Citizens for Balanced Use*, 647 F.3d at 899 (citation omitted)
 17 (allowing environmental group to intervene where it had different objectives than the U.S. Forest
 18 Service); *see Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179 (2022) (even when
 19 state agents pursue interests “related” to those of political actors, those interests are not properly
 20 considered “identical”); *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir.
 21 2001) (“[T]he government’s representation of the public interest generally cannot be assumed to
 22 be identical to the individual parochial interest of a [political candidate] merely because both
 23 entities occupy the same posture in the litigation.”).

1 Indeed, courts have “often concluded that governmental entities *do not* adequately
 2 represent the interests of aspiring intervenors.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728,
 3 736 (D.C. Cir. 2003) (emphasis added); *accord La Union*, 29 F.4th at 309 (The “private
 4 interests” of the political committees “are different in kind from the public interests of the State
 5 or its officials”); *Citizens for Balanced Use*, 647 F.3d at 899.

6 While the Secretary of State and various county official defendants may oppose the relief
 7 that Plaintiffs seek, they do not share the DNC’s particular interest in the votes of *Democratic*
 8 *Party members* and the *election of Democratic candidates*. The Defendants’ interests in this
 9 litigation are defined by their statutory duties to conduct elections and to administer Nevada’s
 10 election laws. *See, e.g.*, NRS 293.124(1) (“The Secretary of State shall serve as the Chief Officer
 11 of Elections for this State [and] is responsible for the execution and enforcement of the
 12 provisions of title 24 of NRS and all other provisions of state and federal law relating to elections
 13 in this State.”); NRS 293.269925(1) (county clerk responsible for “establish[ing] procedures for
 14 the processing and counting of mail ballots”). Indeed, Defendants’ stake is defined by their
 15 statutory duties, requiring them to “represent the broad public interest.” *Great Basin Res. Watch*
 16 *v. U.S. Dep’t of the Interior*, Case No. 3:19-cv-00661-LRH-WGC, 2020 WL 1308330, at *3 (D.
 17 Nev. Mar. 19, 2020) (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994)).

18 By contrast, the DNC’s interests are much more particular. The DNC’s mission is to
 19 ensure that as many of its voters who have cast ballots have their votes counted and to have its
 20 candidates elected. Plaintiffs’ lawsuit threatens significant harm to the DNC’s core missions of
 21 mobilizing and educating Democratic voters and electing Democratic candidates if NRS
 22 293.269921 is invalidated. *See Issa*, 2020 WL 3074351, at *3 (“While Defendants’ arguments
 23 turn on their inherent authority as state executives and their responsibility to properly administer

1 election laws, the Proposed Intervenor is concerned with ensuring their party members and the
 2 voters they represent have the opportunity to vote in the upcoming federal election, advancing
 3 their overall electoral prospects, and allocating their limited resources to inform voters about the
 4 election procedures.”). Plaintiffs’ actions would disenfranchise voters and will harm Democratic
 5 candidates. Nothing could be more “germane” to the DNC’s purposes. *See La Union*, 29 F.4th at
 6 308 (citation omitted).

7 For these reasons, courts have repeatedly permitted political parties to intervene in cases
 8 involving election administration, even where government officials are named as defendants—
 9 including in Nevada. *See, e.g., Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-
 10 1445 JCM (VCF), 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention as of
 11 right because Secretary of State did not adequately represent partisan organization’s interests,
 12 despite both wishing to defend against suit); *Paher*, 2020 WL 2042365, at *3 (similar, even
 13 where intervenors and named defendant “presumably share[d] the goal of protecting the all-mail
 14 election provisions . . . being challenged”); *Fair Maps Nevada v. Cegavske*, No. 3:20-CV-00271-
 15 MMD-WGC, 2020 WL 8188427, at *3 (D. Nev. May 20, 2020) (similar); *see also, e.g., Hobbs*,
 16 2020 WL 6559160, at *1 (allowing parties, including the RNC, to intervene in case brought by
 17 the DNC and Arizona Democratic Party); *Issa*, 2020 WL 3074351, at *3.

18 The DNC satisfies this prong too; at the very least, the Defendants may not adequately
 19 represent the DNC’s interests, and this potential inadequacy is all that is necessary to support
 20 intervention.

21 **C. Alternatively, the DNC should be permitted to intervene under Rule 24(b).**

22 If the Court does not grant intervention as a matter of right, the DNC respectfully
 23 requests that the Court exercise its discretion to allow the DNC to intervene under Rule 24(b).

25 MOTION TO INTERVENE—16

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1 The DNC easily satisfies the requirements for permissive intervention under Rule 24(b),
 2 which grants this Court broad discretion “to allow anyone to intervene who submits a timely
 3 motion and ‘has a claim or defense that shares with the main action a common question of law or
 4 fact.’” *Nevada*, 2019 WL 718825, at *2 (quoting Fed. R. Civ. P. 24(b)(1)(B)). “Because a court
 5 has discretion in deciding whether to permit intervention, it should consider whether intervention
 6 will cause undue delay or prejudice to the original parties, whether the applicant’s interests are
 7 adequately represented by the existing parties, and whether judicial economy favors
 8 intervention.” *Id.* (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989), *aff’d sub
 9 nom. Venegas v. Mitchell*, 495 U.S. 82 (1990)); *Paher*, 2020 WL 2042365, at *3 (granting
 10 permissive intervention to the DNC and others).

11 For the reasons discussed above, the DNC’s motion is timely. Intervention will result in
 12 neither prejudice nor undue delay. The DNC has an undeniable interest in a swift resolution to
 13 this action to ensure that Defendants have sufficient time to allow every Nevada voter to cast a
 14 ballot in the upcoming presidential election and beyond. Moreover, the DNC has significant
 15 interests at stake in this litigation, as outlined above, which would be undermined by the relief
 16 Plaintiffs seek and the DNC cannot rely on Defendants to adequately protect its interests. Finally,
 17 the DNC also has defenses to Plaintiffs’ claims that share common questions of law and fact.
 18 Indeed, there is one core “question of law” undergirding the named Defendants’ and DNC’s
 19 positions: the validity of NRS 293.269921. Although each party will undoubtedly approach that
 20 question in different ways, informed by their unique interests, this is more than enough to satisfy
 21 Rule 24(b).

22 For the reasons set forth above, permitting the DNC’s intervention is consistent with Rule
 23 24 and will permit it to protect its rights and the rights of its members.

1 **III. Conclusion**

2 For the reasons stated above, the DNC respectfully requests the Court grant its motion to
3 intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it to intervene
4 under Rule 24(b).

5 Dated: May 13, 2024

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27 **Motion for Admission Pro Hac Vice Pending;
28 Attorney has complied with LR IA 11-2*

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, I filed the foregoing **MOTION TO INTERVENE** with the Clerk of the Court for the United States Federal District Court for the District of Nevada by using the CM/ECF system and that the proper parties were served by way of electronic service.

/s/ Dominique Hoskins
An Employee of Brownstein Hyatt Farber Schreck